Cr. A/Kamara/52.

1952.

File No. 2/52

Legal DEPARTMENT
G BRANCH

Subject:— Criminal Appeal.

P=17
F

1952

Cr A/Kamara/52

File No. 2/52

Bd. Scott...Bldg 14-3

From:

The Public Prosecutor, Kanara.

To

The District Magistrate, Kanara, Karwar.

No. 489 of 1952. Karwar, dated 27th October 1952.

Sir,

I am sending herewith certified copy of judgment in criminal case No. 184 of 1952 in which Ganapati Vithoba was charged of committing an offence under section 7 read with section 8 of the E.S.T.P.Act. The prosecution case was that on 11-1-1952 he attempted to transport 8 kolgas and 8 siddis of paddy from Shivpur village to Ulvare. He was caught when he had crossed the limits of Shivpur and entered village Karebail which was on his way to Ulvare. The accused is a resident of Shivpur. The case was tried by S.V.Habbu, S.D.M.F.C.Karwar Town. He has acquitted the accused on the ground that the accused being a cultivator was permitted ~~x~~ to carry his threshed grain to the adjoining village without a permit under section 5 sub section 2 clause (ii) of the Bombay Food Grains Regulation of Movement and Sale Order 1949. (vide page 41 of the Manual of Statutory Orders).

It appears that the learned magistrate has taken a wrong view of the question of law involved in the case. The accused admitted that he had been caught in the village Karebail. He admitted that he had brought the stock from village Shivpur. Therefore inorder to get the benefit of the provision quoted above evidence was necessary to prove that he had cultivated lands at Shivpur and that his house is at Karebail. The ground for giving benefit of this provision is mentioned by the learned magistrate as follows :-

> " The transport of the paddy in question by the accused to Karebail is not objectionable provided he has residence at Karebail. The accused is an old and respectable cultivator. He states that he had lodging in harvesting time at Karebail ".

Whereas the accused statement was that he was carrying paddy from his land in Shivpur to Karebail. Therefore unless there

was evidence to prove that he had lands at Shivpur and had a residential house at Karebail the benefit of the provisions could not be given to him. Such provisions should not be invoked indiscriminately unless there is evidence on record to justify the app application of the provision. Such apquittals on perverse finding not justified by record deserve to be checked. Hence this recommendation. There are too many cases of this type and if the accused are going to be acquitted on the strength of their own statements there will not be a proper check on the special provisions of law. It will indirectly encourage such offences.

Yours faithfully,

Public Prosecutor, Kanara.

L.D.
G-998
dt. 24/11/52

Forwarded with compliments to the R.L.A. Bombay along with the certified copy of the Judgment in cr.case No.184 of 1952.

Public Prosecutor, Kanara.

Office of the RLA

Submitted

Please see the Public Prosecutor, Karwar's endorsement No 489 dt. the 27th October 1952.

The P.P. has recommended an appeal against the order of acquittal of the accused Gopala Vithoba in Cr. Case No 184 of 1952 by the Sub-Divisional Magistrate, J.C., Karwar Town. The D.M. Karwar has not yet forwarded his report He may be requested to forward the same.

Draft memo. for the D.M., Karwar is put up herewith for approval & signature.

The judgement is dated the 14.8.52. A divisional period of filing an appeal will expire on 13.11.52 & the statutory period will expire by 13.2.53.

11.11.52

A.S.C.

A. 47

No. G-608

Office of the
Remembrancer of the Legal Affairs,
Bombay Castle (Bombay No.1) 13 November 1952.

To

The District Magistrate,
Kanara,
Karwar.

Subject : A proposal for filing an appeal against acquittal in Criminal Case No. 184 of 1952 by Sub-Divisional Magistrate, First Class, Karwar Town.

Sir,

I am to invite your attention to the Public Prosecutor Kanara's letter No. 489 dated the 27th October 1952 addressed to you (copy enclosed to this office) on the above subject and to request you to forward your report in the matter at a very early date.

Yours faithfully,

O

O.C — SRF 12/11

For Remembrancer of Legal Affairs.

Issued 10/12/11

Submitted after issue
Receipt of D.M.'s report may
be awaited.

PM
12.11.52

Pl. remind after a fortnight.

A.S.(G.) 12/11

From:

The Public Prosecutor, Kanara.

To

The District Magistrate, Kanara, Karwar.

No. 489 of 1952. Karwar, dated 27th October 1952.

Sir,

I am sending herewith certified copy of judgment in criminal case No. 184 of 1952 in which Ganapati Vithoba was charged of committing an offence under section 7 read with section 8 of the E.S.T.P.Act. The prosecution case was that on 11-1-1952 he attempted to transport 8 kolgas and 8 siddis of paddy from Shivpur village to Ulvare. He was caught when he had crossed the limits of Shivpur and entered village Karebail which was on his way to Ulvare. The accused is a resident of Shivpur. The case was tried by S.V.Habbu, S.D.M.F.C.Karwar Town. He has acquitted the accused on the ground that the accused being a cultivator was permitted x to carry his threshed grain to the adjoining village without a permit under section 5 sub section 2 clause (ii) of the Bombay Food Grains Regulation of Movement and Sale Order 1949. (vide page 41 of the Manual of Statutory Orders).

It appears that the learned magistrate has taken a wrong view of the question of law involved in the case. The accused admitted that he had been caught in the village Karebail. He admitted that he had brought the stock from village Shivpur. Therefore inorder to get the benefit of the provision quoted above evidence was necessary to prove that he had cultivated lands at Shivpur and that his house is at Karebail. The ground for giving benefit of this provision is mentioned by the learned magistrate as follows :-

" The transport of the paddy in question by the accused to Karebail is not objectionable provided he has residence at Karebail. The accused is an old and respectable cultivator. He states that he hd lodging in harvesting time at Karebail ".

Whereas the accused statement was that he was carrying paddy from his land in Shivpur to Karebail. Therefore unles there

COLLECTOR'S OFFICE
KANARA.
File No.
Date of Receipt } 28 OCT 1952

13-13

was evidence to prove that he had lands at Shivpur, and had a residential house at Karebail the benefit of the provisions could not be given to him. Such provisions should not be invoked indiscriminately unless there is evidence on record to justify the application of the provision. Such apquittals on perverse finding not justified by record deserve to be checked. Hence this recommendation. There are too many cases of this type and if the accused are going to be acquitted on the strength of their own statements there will not be a proper check on the special provisions of law. It will indirectly encourage such offences.

Yours faithfully,

Public Prosecutor, Kanara.

Certified Copy of the judgment sent to the R.L.A. Bombay. 27/11/52

No. TRF 2580
Office of the District Magistrate, Kan.
Karwar, 17/20-11.1952.

L. D. 24 NOV 1952

Forwarded with compliments to the Remembrancer of Legal Affairs, Bombay.

2. The District Magistrate considers that this is not a fit case for filing an appeal against the order of acquittal.

13/11 District Magistrate, Kanara.
13/11

G-1089
24-11-52

Submitted.

Please see the endt. of the D.M. Kanara, at p.13 ante hh1-3 ante

The P.P., Kanara has recommended an appeal against the order of acquittal of Ganpati Vithoba passed by the Sub-Divisional Magistrate, First Class, Kanara Town. The D.M. does not consider this a fit case for filing an appeal.

The accused was charged under sections 7 and 8 of the E.S.(T.P.) Act, 1946 for having attempted to transport 8 kolgas and 8 siddis of paddy from Shivpur village to Ulvare without a permit.

The prosecution case is that on 11-1-52, he attempted to transport 8 kolgas and 8 siddis of paddy from Shivpur village to Ulvare. He was caught when he crossed the limits of Shivpur and entered village Karebail which was on his way to Ulvare.

The accused admitted that he was carrying the stuff in question to Karebail.

The Learned Magistrate acquitted the accused on the following gonds:- "The accused, being a cultivator was permitted to carry his threshed grain to the adjoining village without a permit under item No. (ii) of sub-clause (2) of clause 5 of the Bombay Foodgrains (Regulation of Movement and sale) Order, 1949 and as such the transport of the paddy in question by the accused to Karebail is not objectionable, provided he has residence at Karebail. The accused is an old and respectable cultivator and has stated that he has been lodging in harvesting time at Karebail. The D.M., has accepted his statement as true as the witness (presumably Kagal Patil) did not impress him as reliable. cf p 41 of CSD Manual

The P.P. recommends hh1-3 ante an appeal on the grounds that the D.M. has taken a wrong view of the law involved in the case, that Unless there was

evidence to prove that he has lands at Shivpur and had a residential house at Karebail, the benefit of the provisions could not be given to him, a he admitted that he had brought the stock from village Shivpur. According to him, if the accused are going to be acquitted on the strength of their own statements, there would not be a proper check on the special provisions of law and it would indirectly encourage such offences.

The accused has been acquitted by virtue of itam No. (ii) of sub-clause (2) of clause 5 on the strength of his contention that he had brought the stock from village Shivpur to the adjoining village Karebail where he was residing in harvest season. The prosecution has not been able to disprove his contention. Besides the Learned Magistrate has not placed any reliance on the witness and has considered the accused to be a respectable ~~person~~ cultivator. In view of all these circumstances, the order of acquittal seems to be proper and the case does not appear to be a fit one for going in appeal.

The judgment is dated 14-8-52. Adminstrative period of filing an appeal has expired on 13-11-52 and the statutory period will expire by 13-2-53.

PTM
29.11.52

A.S.(G.)

In this case the accused was prosecuted for breach of clause 5 of the Bombay Foodgrains (Regulation of Movement and Sale) Order, 1949 read with sections 7 and 8 of the E.S.(T.P.) Act, 1946 for attempting to transport 8 Kolgas and 8 siddis of paddy on 11.1.1952 from Shivpur village to Ulvar without a permit as required under the said Order. The accused admitted that he was

* p. 380 of the CSD manual

15 + 7

another village.

carrying the stuff in question to Karebail. But he claimed exemption under clause 5 (2) (ii) of the Bombay Foodgrains (Regulation of Movemant and Sale) Order, 1949 stating that he was a cultivator and the removal was of threshed grain from one village to another village where he actually resided. The learned Magistrate disbelieved the evidence of the defence witness produced by the accused but stated that he could not rule out the statement made by the accused and believed him as he was an old and respectable cultivator, The learned Magistrate therefore accepted the statement of the accused and acquitted him. The Public Prosecutor recommends an appeal against the acquittal in this case on the ground that there are too many cases of this type and if the accused are going to be acquitted on the strength of their own statements then there will not be a proper check on the spectial provisions of Law. The D.M. however does not consider this a fit case to be taken to the High Court in appeal.

p. 1 ante

p. 13 ante

Sub clause (i) of clause 5 of the Bombay Foodgrains (R.of M. & S.) Order, 1949 provides that no person shall remove any foodgrains by road, rail, water or air from the Revenue limits of any village to any place outside the said limits except in accordance with the permit granted by the authorities mentioned in that clause. Clause 5(2)(ii) however provides that nothing in sub clause (1) shall apply to the removal by a cultivator of threshed grain from the village where they are produced to another village adjoining it where he actually resides.

Under Section 105 of the Indian Evidence Act the burden of proving that the case of the Accused comes under any exception is on the Accused. It seems the Accused examined only one witness in support of his defence to prove that his case fell under the exception and that was Rama Biramra Naik. The learned Magistrate

has stated that this witness did impress him as reliable, but he acquitted the Accused on his own statement as he considered him to be an old and respectable cultivator. The Accused has not discharged his burden and the acquittal of the Accused merely on ~~the~~ his own statement ~~of the Accused~~ seems the wrong. However the offence was only of removal of 8 Kolgas and 8 Siddis of paddy which is equivalent to 8 paylees and 8 seers of paddy which is a small quantity of foodgrains. Besides ther is no allegation of black marketing against the Accused that he was removing it for sale, etc. The D.M. does not recommend an appeal. The D.M.'s recommendation may be accepted.

The P.P., Kanara may be asked to report a more glaring case of this type for taking it to the High Court in appeal.

SRP
3/12
DS (CR) Taken. Y. Yaub 3-12-52
RLA R
3/12

C&D
4/12

4/12/52 — See H.D.
6/12 — See C&D

× No. G-663
H-12-52

The papers may be returned to C.D.
DS
8/12

DY DCS(D)

3681
Received in C. S. D. Br.
on 6/12/52

C.D.

Office of the RLA
Draft letter to the D.M. Kanara is put up for approval and signature
8/12
9.12.52
A.S.(C)
D.S.(C)

Ex. A.
No. G-1158
Dated 8-12-52
Kum CT.

19 17

No. G- 681

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 10/12 December 1952.

To

The District Magistrate,
Kanara Karwar.

Subject:- Proposal for filing an appeal against acquittal in Criminal Case No. 184 of 1951 by the Sub-Divisional Magistrate, First Class, Karwar Town.

Sir,

With reference to your endorsement No. TRF 2580, dated the 17th/20th November 1952, on the subject noted above, I have the honour to inform you that Government agrees with you that this is not a fit case for filing an appeal to the High Court.

The Public Prosecutor, Kanara may be asked to report a more glaring case of this type for taking it to the High Court in appeal.

The papers of the case accompany.

Yours faithfully,

O.C. Tabin. Y. Varek 10/12
For Remembrancer of Legal Affairs.

Copy to:-

The Public Prosecutor, Kanara with reference to his endorsement No. 489, dated the 27th October 1952.

C.9.12.52.

Issued
10/12

~~7 8~~

18

Submitted after issue
These pps. may be
filed in Cr.A/Kanara/52 file.

PNM
10.12.52

A.S. C[illegible]
10/12